IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Crl.Rev.Pet.No. 507 of 2007(C)

AGAINST THE ORDER DATED 04/01/2007 IN CMP 1127/06 IN ST.7/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES), MANJERI

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REVN. PETITIONER: PETITIONER/ACCUSED

VENU MADHAVAN K.C., ARCHANA,
M.L.A.ROAD, KOVOOR, CHEVAYOOR P.O.,
CALICUT-17.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS: REPONDENT/COMPLAINANT

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1. A.K.BALAKRISHNAN NAIR,
S/O.KRISHNAN NAIR, MANJUSREE,
NADUVILAKALAM, MELAKKAM, MANJERI P.O.,
MALAPPURAM DT.

2. STATE OF KERALA REP.BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.A.K.MADHAVAN UNNI
SRI.S.RAMACHANDRAN
PUBLIC PROSECUTOR K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 507 OF 2007 C

Dated this the 19th day of September, 2007

O R D E R

Petitioner, who is the accused in S.T.No.7/06 on the file of the JFCM-II(Forest Offences), Manjeri, challenges the order dated 4.1.06 in CMP.No.1127/06 filed by the petitioner to send Ext.P1 cheque to an expert for obtaining for expert opinion regarding the age of the signature put on Ext.P1 cheque.

2. The learned counsel appearing for the revision petitioner assailed the impugned order contending, inter alia, as follows:-

Going by the private complaint filed by the 1st respondent herein, the accused borrowed Rs.75,000/- in the year 2005 and when the amount was demanded, he issued Ext.P1 cheque dated 2.1.05 for the said amount. Annexure-C produced in this revision is the reply sent by the accused to the statutory notice issued by the complainant. In that reply, he has specifically contended that he had borrowed a sum of Rs.10,000/- from the complainant in the year 1992 and had given a signed blank cheque, that he repaid the said amount in the year 1992 itself but the cheque was not returned and the complainant told him that the cheque was misplaced and while he went to gulf, he told the accused that as and when the cheque is traced out, it will be given to his

family members. He came back in the year 2000. If the complainant is to be believed, the cheque was issued in the year 2005 and if the accused is to be believed, the cheque was issued in the year 1992. There is a long gap of 13 years between the two transactions. After the 313 Cr.P.C. examination is over, the petitioner filed the present application for sending the cheque to the handwriting expert for ascertaining the age of the signature. The court below has virtually held even before the trial of the case is over, that the defence version as stated in the reply is false. Going by the decision of the Constitutional Bench of the Supreme Court reported in ***State Vs. Chaudhary*** [1996 (1) KLT 454 (SC)] the accused is entitled to request the court to send the disputed documents to the handwriting expert for comparison and opinion. In the decision reported in ***Aravindakshan Nair K.R. Vs. Essen Bankers and others*** [ILR 2007 (3) Ker. 312], this court had exercised the power to send the cheque in question to the handwriting expert for comparison. The material downloaded from the Forensic Science Laboratory, New Delhi will show that one of the aspects which is dealt with by the Documents Division of the Forensic Science Laboratory is ascertainment of relative or absolute age of the documents. If the accused is able to establish that the signature on the cheque in question was put in the year 1992 and not in the year 2005 as alleged by the complainant, it will falsify the complainant's case.

3. I am afraid that I cannot agree with the above submissions. The complainant has no case that the cheque in question was signed by the accused in his presence. All that he has stated is that the cheque was given in acknowledgment of the borrowal of Rs.75,000/- made earlier. The accused also has admitted his signature in Ext.P1 cheque dated 7.2.05. His specific version in Annexure-C reply to the statutory notice is that the cheque was issued as a blank signed cheque at a time when he borrowed a sum of Rs.10,000/- in the year 1992 and he repaid the said amount in the very same year. But the cheque was not returned. If the amount which he has borrowed is a specific sum of Rs.7,000/- it does not stand to reason as to why he, in the first place, gave a signed blank cheque. Even assuming that he has issued a signed blank cheque as alleged by him, on discharge of the loan, as a reasonable prudent man he should have taken the cheque back. It is not discernible that he has taken any steps for return of the cheque. In the face of this defence set up in the reply notice and which defence is prima facie unbelievable, the request made by him to have the age of the signature ascertained was nothing but an attempt to protract the matter unnecessarily. In the decision reported in ***Aravindakshan Nair K.R. Vs. Essen Bankers and*** others [ILR 2007 (3) Ker. 312] even the trial court while attempting comparison of the disputed signatures, which that court was entitled to under section 73 of the Evidence Act, had

entertained a doubt as to the genuineness of the signature and inspite of that that court held against the accused. It was in that context that this court came to the conclusion that where there was doubt regarding the genuineness of the signature the prudent course open to the court is to leave it to the wisdom of the expert rather than that of the court itself since it is not desirable that the court should perform the role of an expert. I see no good ground to interfere with the order passed by the court below. I am fortified in this conclusion by the decisions reported in ***Francis Vs. Pradeep [***2004 (2) KLT 1080] and ***Baby Thomas Vs. T.T. Paul and Another*** [2007 (3) KHC 732].

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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